

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 0655-03  
Bill No.: HB 563  
Subject: Children and Minors; Crimes and Punishment  
Type: Original  
Date: February 28, 2001

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**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON STATE FUNDS</b>			
FUND AFFECTED	FY 2002	FY 2003	FY 2004
General Revenue	(\$855,618 to unknown)	(\$304,750 to unknown)	(\$342,688 to unknown)
<b>Total Estimated Net Effect on <u>All</u> State Funds</b>	<b>(\$855,618 to Unknown)</b>	<b>(\$304,750 to Unknown)</b>	<b>(\$342,688 to Unknown)</b>

<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>			
FUND AFFECTED	FY 2002	FY 2003	FY 2004
None			
<b>Total Estimated Net Effect on <u>All</u> Federal Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

<b>ESTIMATED NET EFFECT ON LOCAL FUNDS</b>			
FUND AFFECTED	FY 2002	FY 2003	FY 2004
<b>Local Government</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

Numbers within parentheses: ( ) indicate costs or losses.

This fiscal note contains 9 pages.

## **FISCAL ANALYSIS**

### **ASSUMPTION**

Officials from the **Office of the State Public Defender** assumes that existing staff could provide representation for those few cases arising where indigent persons were charged with the enhanced crimes of rape and/or sodomy of a child less than 12 years of age or Child Molestation. However, passage of more than one similar bill would require the State Public Defender System to request increased appropriations to cover cumulative cost of representing the indigent accused in the additional cases.

Officials from the **Office of Prosecution Services (OPS)** assume the cost of the proposed legislation could be absorbed with existing resources.

Officials from the **Department of Health** and the **Department of Social Services** assume this proposal would not fiscally impact their respective agencies.

Officials from the **Office of the State Courts Administrator (CTS)** state this proposal would remove the statute of limitations for certain sex offenses and increase the penalty for some sex offenses involving children.

CTS assumes there may be some increase in the number of cases filed, but would not consider it significant enough to increase the workload of the courts.

Officials from the **Department of Corrections (DOC)** state the following sections of the proposal would have these impacts to their agency:

556.036 -- It would make Statutory Rape and Sodomy in the first degree a dangerous felony if the victim were less than 12 years of age.

Information about the age of the victim is not available, so the exact impact cannot be determined. There are a large number of statutory rape and sodomy cases currently serving time, 640 in total. In addition, there were a total of 146 new admissions for Statutory Rape and Sodomy in FY 2000. If a large percentage of such cases involved a victim under 12, the effect could be significant. A person with a Dangerous Felony conviction must serve 85% of the sentence before being paroled. Based on the average time currently served, the time in prison would increase 12.74 months for Statutory Rape and 14.25 months for Statutory Sodomy.

An estimate of the potential impact was made assuming that 10% of the admissions for Statutory Rape and Sodomy in FY00 involved a victim under 12 years of age. It would result in a need for 7.5 additional beds in the fourth year after its passage and 16.6 additional beds in subsequent years.

ASSUMPTION (continued)

559.125 Information about future contemplated crimes would not be considered confidential information when Probationers and Parolees told it to a P&P officer.

566.067 It would amend the criteria for child molestation 1st degree. Currently, it is a class B felony unless the individual has previously been convicted of it, in which case it is a class A felony. The bill would include prior guilty pleas and convictions or guilty pleas in other states when determining felony class.

At the end of FY 2000, there were 136 individuals incarcerated for child molestation in the first degree. Data is not available on an individual's prior crimes, only on prior incarceration. Seven percent of the inmates incarcerated (10) had served prison time in prisons other than the Missouri DOC, but it is not known if the time was served for child molestation. If it were, the effect would be significant as the average time served for a class A felony is 39.2 months longer than for a B felony.

566.068 Subsection 1. It would amend the crime of child molestation. Currently, an individual who has sexual contact with an individual under 17 is guilty. The bill would make sexual contact a crime if the victim was under 16 and the perpetrator was over 21.

Data pertaining to the age of the victim is not available. The impact is unknown.

566.068 Subsection 2. It would change child molestation in the second degree from a class A misdemeanor to a class D felony. Prior and persistent would change from a class D felony to a class C felony. The prior and persistent wording would also change to include prior guilty pleas and convictions or guilty pleas in other states as prior offenses (only convictions in Missouri are currently considered).

At the end of FY 2000, there were 30 open probation cases in which the probationer had a conviction for 2nd degree child molestation. There were 22 probation openings for 2nd degree child molestation during FY 2000. If the bill passes, those individuals could receive prison instead of probation. The average stay for a class D felony is 15.5 months. Forty-three percent of those admitted with a class D felony receive a term sentence. Passage of the bill would necessitate 13.8 additional beds in the first year and 17.0 in subsequent years.

566.069 Subsection 1. It would add a new crime of child molestation in the 3rd degree if a person touches a person in a way that would be sexual context, but touching occurs through clothing and the person touched is under 13 years of age.

566.069 Subsection 2. Child molestation in the 3rd degree would be a class D felony unless

ASSUMPTION (continued)

there are prior convictions or guilty pleas or a weapon is used in the commission of the crime in which case it would be a class C felony.

This is new crime. There is no data available for analysis. The impact on the DOC is unknown.

566.069 Subsection 3. It would add a new crime of child molestation in the 4th degree if a person touches a person in a way that would be sexual context, but touching occurs through clothing and the person touched is under 16 years of age.

566.069 Subsection 4. Child molestation in the 4th degree would be a class A misdemeanor unless there are prior convictions or guilty pleas or a weapon is used in the commission of the crime in which case it would be a class D felony.

This is new crime. There is no data available for analysis. The impact on the DOC is unknown.

566.083 Subsection 3. This section deals with sexual misconduct involving a child. The prior and persistent wording would also change to include prior guilty pleas and convictions or guilty pleas in other states as prior offenses (only convictions in Missouri are currently considered),

The impact on the DOC is unknown.

566.090 Subsection 2. This section deals with sexual misconduct in the 1st degree. The prior and persistent wording would change to include guilty pleas and prior convictions or guilty pleas in other states as well as prior convictions in Missouri. It would not change the felony class.

The impact on the DOC is unknown.

566.093 Subsection 2. This section deals with sexual misconduct in the 2nd degree. The prior and persistent wording would change to include prior guilty pleas and convictions or guilty pleas in other states as prior offenses as well as prior convictions in Missouri. It would not change the felony class.

The impact on the DOC is unknown.

566.140 This section re-words the requirement of sex offenders placed on probation to participate in sexual offender treatment to include the words "and successfully complete". It would also require the person to follow all directives of the treatment provider

566.141 This section re-words the requirement to participate in sexual offender treatment by

ASSUMPTION (continued)

persons committing a sex crime involving a child to include the words "and successfully complete".

Sections 566.140 and .141 do not specify what may happen in the event that an offender fails to "successfully complete" treatment. If the person did not complete treatment, and the DOC was required to keep an individual under supervision either on probation or in prison, the cost could be significant.

650.055 Subsection 1. This clarifies DNA profiling requirements and includes additional RSMo's in the requirement of who to profile.

Currently, those individuals convicted of violent offenses (chap. 565) or sex offenses (chap. 566) are required to have a blood or other biological sample collected for DNA analysis.

The bill would also require individuals convicted of the following crimes to have a sample collected: Incest, Endangering the Welfare of a Child, Abuse of a Child, Use of a Child in a Sexual Performance, Promoting Sexual Performance by a Child, Robbery-1st degree, Pharmacy Robbery-1st degree, Robbery-2nd degree, Burglary-1st degree, Burglary-2nd degree.

In FY 2000, there were a total of 6,418 new admissions for those crimes. The expenditure for the test would be borne by the Highway Patrol. However, Corrections would incur expenses for staff and space. A phlebotomist comes from Highway Patrol to the Reception and Diagnostic Centers twice a week to collect the samples. There is not space in the medical centers to accommodate the additional samples that would need to be collected. A trailer for each Reception and Diagnostic Center in which this could occur is a potential expense. In addition, more staff would be needed to facilitate movement of the inmate. It is estimated that this could require 2 additional CO I's for each Reception and Diagnostic Center.

In summary the cumulative fiscal impact of passage of this bill on the DOC is an Unknown amount per fiscal year, but at least includes the following definitive numbers. The DOC assumes there will be an addition of at least 7 inmates in FY 2002, 15 in FY 2003 and 17 in FY 2004 as a result of this proposal. Costs to be incurred by the DOC for these additional inmates is estimated to be at least \$93,716 in FY 2002, \$206,844 in FY 2003, and \$241,456 in FY 2004.

Officials from the **Department of Public Safety - Missouri Highway Patrol (MHP)** state that according to their Crime Lab, there are currently 16,000 offenders and approximately 2,000 new individuals per year that meet the amended statute collection requirements. This would require the Crime Lab to travel more throughout the state to collect samples. The current manpower will be able to manage the new collections, but additional equipment and supplies would be

ASSUMPTION (continued)

necessary to perform the DNA analysis on these additional offenders. In addition, the Missouri DNA system is to remain compatible with the FBI DNA data bank system, including equipment, supplies and yearly proficiency tests and continuing education for current DNA criminalists.

The MHP assumes the following costs are one time costs:

- Cost of additional computer hardware/software and equipment for DNA PCR technologies compatible with the FBI's national program = \$300,607
- Supplies/kits for collection and DNA analysis of 18,000 samples = \$412,000
- Proficiency tests and continuing education as mandated by the FBI QA Standards = \$21,500

The following costs are recurring costs:

- Supplies/kits for collection and DNA analysis of 2,000 samples = \$45,780
- Proficiency tests and continuing education as mandated by the FBI QA Standards = \$21,500

The MHP assumes the total costs to their agency for implementation of the DNA sampling requirements as stated in this proposal would be \$730,544 in FY 2002, \$69,298 in FY 2003 and \$71,377 in FY 2004.

**Oversight** assumes that since no new DNA criminalists are requested by the MHP, there will not be a need for additional proficiency tests and continuing education expenditures.

Officials from the **Department of Mental Health (DMH)** state that the DOC estimates the addition of the new crimes in this bill will result in an increase of 2 - 3 referrals per year. An addition to the sexually violent predators program of 2 - 3 individuals referred to the program will result in increased variable costs (food, medical, etc) of \$45 per day per person x 365 days = \$16,425 annual cost x 3 individuals = \$49,275 full year cost. The FY '02 cost for a 10 month period is \$41,063. However, once the number of additional referrals has reached 25 on a ward, the opening of a new ward will be required, necessitating additional costs (staffing, etc) of \$180-per day per person (for a total of \$225 per day per person).

FISCAL IMPACT - State Government

FY 2002

FY 2003

FY 2004

RAS:LR:OD (12/00)

<u>FISCAL IMPACT - State Government</u>	FY 2002	FY 2003	FY 2004
<b>GENERAL REVENUE FUND</b>			
<u>Costs</u> - Department of Corrections Incarceration and/or probation	(\$93,716) to (unknown)	(\$206,844) to (Unknown)	(\$241,844) to (Unknown)
Costs - Missouri Highway Patrol DNA testing expenditures	(\$712,627)	(\$47,153)	(\$48,568)
<u>Costs</u> - Department of Mental Health inpatient treatment	<u>(\$49,275)</u>	<u>(\$50,753)</u>	<u>(\$52,276)</u>
<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>	<b><u>(\$855,618 to Unknown)</u></b>	<b><u>(\$304,750 to Unknown)</u></b>	<b><u>(\$342,688 to Unknown)</u></b>
<u>FISCAL IMPACT - Local Government</u>	FY 2002	FY 2003	FY 2004
	\$0	\$0	\$0

#### FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

#### DESCRIPTION

This proposal makes various changes to laws relating to sexual crimes. In its main provisions, the proposal:

- (1) Eliminates the statute of limitations for prosecuting forcible rape, attempted forcible rape, and forcible sodomy.
- (2) Allows certain sexual-crime defendants to be physically excluded from the room in which child victims are being deposed;
- (3) Adds statutory rape and statutory sodomy when the victim is less than 12 years old to the definition of "dangerous felony" as used in the criminal code;
- (4) Removes information relating to future contemplated crimes from the privilege accorded

#### DESCRIPTION (continued)

RAS:LR:OD (12/00)

between probation or parole personnel and defendants;

(5) Revises the crime of child molestation in the first degree by increasing the punishment to a class A felony for persons who have pled guilty to or been convicted of an offense in another state which would have been a Chapter 566, RSMo, sexual crime in Missouri;

(6) Redefines the crime of child molestation in the second degree to apply to persons over 21 years who subject persons under 16 years to sexual contact. Current law applies to all persons who subject persons under 17 years to sexual contact;

(7) Changes the punishment for child molestation in the second degree from a class A misdemeanor to a class D felony, unless the defendant has previously pled guilty to or been convicted of a Chapter 566 sexual crime in Missouri or a similar crime in another jurisdiction, in which case it is a class C felony;

(8) Creates the crimes of child molestation in the third and fourth degrees, defines the crimes, and details their range of punishments;

(9) Allows the punishments to be enhanced for the crimes of sexual misconduct involving a child and sexual misconduct in the first and second degrees if the defendant pled guilty to or was convicted of a similar crime in another jurisdiction; and

(10) Adds individuals convicted of certain child-related sexual crimes, robbery, and burglary to the list of persons who must submit a blood or scientifically accepted biological sample for purposes of DNA profiling analysis.

This proposal has an emergency clause.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

#### SOURCES OF INFORMATION

Office of the State Courts Administrator  
Office of the State Public Defender  
Office of Prosecution Services  
Department of Corrections  
Department of Social Services  
Department of Health

#### SOURCES OF INFORMATION

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Department of Mental Health  
Department of Public Safety - Missouri Highway Patrol

A handwritten signature in black ink, appearing to read "Jeanne Jarrett". The signature is stylized with a large initial "J" and a cursive "e" at the end.

Jeanne Jarrett, CPA  
Director  
February 28, 2001